

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS  
WESTERN SECTION**

**CIVIL ACTION NO.:04-30036**

**Frank Labuz and Harriet Labuz,  
Plaintiffs**

**v.**

**Cascades Diamond Inc.,  
Defendant**

FILED  
U.S. DISTRICT COURT  
DISTRICT OF MASS

**PLAINTIFFS' MOTION TO CONVERT DEFENDANT'S MOTION TO DISMISS INTO A  
MOTION FOR SUMMARY JUDGEMENT OR IN THE ALTERNATIVE OPPOSITION  
TO DEFENDANT'S MOTION TO DISMISS**

Now come the plaintiffs in the above captioned matter and hereby move that the defendant's Motion to Dismiss pursuant to Federal Rules of Civil Procedure 12(b)(6) be converted into a Motion for Summary Judgement and that the court accept the attached memorandum of law and Rule 56.1 Statement of Undisputed together with exhibits as Plaintiffs' Cross-Motion for Summary Judgement.

In support of said motion, the plaintiffs state that the central issue in this case concerns a matter of contract interpretation and therefore is an issue of law. Wherefore, in the interest of expediency and judicial economy the plaintiffs ask that the court convert the matter to summary judgement and enter judgement in favor of the plaintiffs.

In the alternative, the plaintiffs ask that this court accept the attached memorandum of law as Plaintiffs Opposition to Defendant's Motion to Dismiss.

Respectfully Submitted,

The Plaintiffs  
Frank and Harriet Labuz  
By their Attorney,

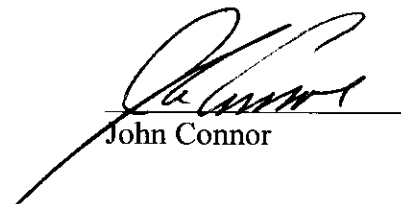
by:   
John D. Connor, Esq.

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**RULE 7.1 CERTIFICATION**

I John Connor hereby certify that I contacted opposing counsel Melissa Shea to obtain her consent to this Motion but was unable to obtain it. I also certify that on May 21, 2004, I served the above document to all parties of interest by mailing copies thereof, postage prepaid to Melissa Shea, Esq. Sullivan and Hayes and Quinn, P.C. One Monarch Place, Suite 1200, Springfield, MA 01144-1200.

  
John Connor